IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO. 2222 OF 2007

Jivraj Baburao Pawar. ... Applicant.

V/s.

The State of Maharashtra
and another. ... Respondents.

Samir A. Vaidya for the applicant.

U.V.Nikam, APP for the State.

CORAM: V.C.DAGA, J.

DATED: 17th July 2007.

P.C.:

. This is a case wherein the applicant with the legal assistance is playing game of hide and seek by suppressing material facts, and at time went to the extent of making false statements before the Court, as such in my opinion, he does not deserve any discretionary relief muchless the relief sought in the present application.

The Facts :

2. The factual matrix reveals that the applicant was in the employment of Government of Maharashtra as Talathi. Thereafter, he was promoted as Circle

Officer and came to be posted at Taluka- Mohol, District- Solapure. He, thereafter, in the month of July, 2005 came to be appointed as Taluka Supply Inspector.

3. It appears that the Collector, Solapur had received an information that there was large scale misappropriation of food grains from the Government godown. Therefore, stock of the Government godown was physically checked. During the course of checking it was found that more than 25,000 bags of wheat and rice were missing from the godown though in the stock register the said missing bags were shown as if the stock is actually lying in the godown.

4. The Assistant District Supply Officer, Solapur after due verification submitted his report to the District Supply Officer, Solapur on the basis of which, Additional Collector, Solapur (complainant) lodged complaint dated 31st March, 2006 against the officers responsible for such misappropriation of food grains from the government godown at Mohol.

5. On the basis of the said complaint, on the very same day, offences punishable under sections 409 and 420 of Indian Penal Code came to be registered with the Mohol Police Station vide C.R.No.110/2006.

6. That the applicant, who was serving as Taluka Inspector at Mohol, apprehending his arrest in the aforesaid crime, had moved for pre-arrest bail before the Sessions Court. The said application, after considering rival submissions, came to be rejected vide order dated 27th November, 2006 passed by the Addl.Sessions Judge, Solapur.

7. The applicant, thereafter, approached this Court vide Criminal Application No.4353/2006 and obtained interim protection under order dated 11th January, 2007 which came to be continued from time to time and, ultimately, after some arguments, learned single Judge (Bhatia, J.), vide order dated 8th February, 2007, was pleased to passed the following order:

> After some arguments Mr.Aandsurve, the learned counsel for the applicant seeks to withdraw the application so that the applicant shall surrender before the Investigation Officer on 13th February, 2007.
>
> Application stands disposed off as withdrawn.
>
> (emphasis supplied)

8. The applicant did not surrender in compliance with the order of this Court dated 8th February, 2007 referred to hereinabove; on the pretext that he was

under the bonafide belief that the order passed by this Court dated 8th February, 2007 was only in respect of withdrawal of application and that there was no necessity to surrender before the investigating officer. He, thus, did not submit to the order of this Court.

9. The applicant, thereafter, preferred fresh application for anticipatory bail being Criminal Application No.1152/2007 before this Court suppressing the order dated 8th February, 2007 and once again obtained interim bail vide order dated 3rd April, 2007, which was operated in his favour till 30th April, 2007.

10. On 30th April, 2007, when the matter came before learned single Judge (Smt.Tahilramani, J.) of this Court, the respondent- State pointed out during the course of hearing that, the applicant was to surrender before the Investigation Officer and was to apply for regular bail and that he did not surrender.

11. When the above fact came to the notice of this Court, learned counsel appearing for the applicant sought permission to withdraw that application being

Criminal Application No.1152/2007. The same was dismissed as withdrawn and interim protection granted to the applicant came to be vacated.

12. It appears that the applicant thereafter, approached the Apex Court with special leave petition (S.L.P.). The Apex Court vide order dated 3rd July, 2007 dismissed S.L.P. as withdrawn, which is clear from the zerox copy of the order produced before me. However, in the present application, in para- 4(xx), the applicant has made statements reading as under:

> "The Applicant states that the Applicant thereafter approached the Hon'ble Apex Court concerning the grant of pre-arrest bail to the Applicant. The Hon'ble Apex Court on the 3rd of July 2007, allowed the Applicant to withdraw the Applicant with liberty to file Application before the appropriate Court. The Applicant craves leave to refer to and rely upon the copy of the said order dated 3rd July 2007, as and when produced."
>
> (emphasis supplied)

In the above statements, a positive statement is made with regard to the grant of liberty to file fresh application before this Court.

Consideration :
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13. At this juncture, it will be relevant to mention that the order of the Apex Court dismissing

S.L.P. was not produced along with the present application. However, sensing some foul game, considering previous conduct of the applicant, this Court insisted for copy of the order. Learned counsel agreed to produce the order of the Apex Court in post-lunch session on the same day; and, ultimately, produced the same with an oral apology saying that the statement made in the application is incorrect.

14. Needless to mention that it is difficult to accept the contention of learned counsel for the applicant that he was not aware of the order of the Apex Court. As a matter of fact, this order was produced by him within two hours. He was asked to produce order in the pre-lunch session. He produced it in the post-lunch session. In the above view of the matter, for having made false statements consistently, in my view, the applicant is not entitled to any discretionary relief muchless for bail, unless he complies with the order dated 8th February, 2007 passed by this Court in Criminal Application No.4353/2006.

15. The applicant would not be entitled for bail unless he surrenders before the Investigation Officer

as indicated in the order dated 8th February, 2007. Since the date for surrender was fixed as 13th January, 2007 in the order dated 8th February, 2007, now, the said date for surrender is being extended by another two weeks from the date of this order.

16. Mere rejection of this application will not serve the ends of justice. Since the applicant has tried to mislead this Court by making false and incorrect statements in the application as well as in the oral submissions, I dismiss this application with costs quantified in the sum of Rs.25,000/-.

JUDGE